

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT KELLY WALTERS,

Plaintiff,

No. CIV S-02-1784 DFL JFM P

vs.

R. CASTRO, et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. In his amended complaint, plaintiff claims that doctors at High Desert State Prison violated his rights under the Eighth Amendment by failing to provide adequate medical treatment, delaying necessary medical care, and intentionally interfering with plaintiff's need for treatment of a hemangioma located behind plaintiff's right eye.¹ This matter is before the court on the motion of defendant Seoung Rhee, M.D. for summary judgment. Defendant Rhee

¹ Plaintiff also raised a state law negligence claim against several defendants, including defendant Dr. Rhee. (Amended Complaint, filed March 31, 2003, at 14.) On September 29, 2003, plaintiff filed a stipulation in which he conceded that his state law negligence claim was barred by his failure to comply with the claim presentment requirements of California's Tort Claims Act, California Gov't Code §§ 945.4, 911.2, 905.2 and 950.2. (See Notice of Motion and Motion of Plaintiff Stipulating Not to Oppose Affirmative Defenses Applicable to California Tort Claims, filed September 29, 2003.) Pursuant to that stipulation, plaintiff's state law negligence claim against the California defendants is no longer before the court.

1 contends this action is barred by the statute of limitations and, in the alternative, that he provided
2 plaintiff with constitutionally adequate medical care.

3 SUMMARY JUDGMENT STANDARDS UNDER RULE 56

4 Summary judgment is appropriate when it is demonstrated that there exists “no
5 genuine issue as to any material fact and that the moving party is entitled to a judgment as a
6 matter of law.” Fed. R. Civ. P. 56(c).

7 Under summary judgment practice, the moving party

8 always bears the initial responsibility of informing the district court
9 of the basis for its motion, and identifying those portions of “the
10 pleadings, depositions, answers to interrogatories, and admissions
on file, together with the affidavits, if any,” which it believes
demonstrate the absence of a genuine issue of material fact.

11 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). “[W]here the
12 nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary
13 judgment motion may properly be made in reliance solely on the ‘pleadings, depositions, answers
14 to interrogatories, and admissions on file.’” Id. Indeed, summary judgment should be entered,
15 after adequate time for discovery and upon motion, against a party who fails to make a showing
16 sufficient to establish the existence of an element essential to that party’s case, and on which that
17 party will bear the burden of proof at trial. See id. at 322. “[A] complete failure of proof
18 concerning an essential element of the nonmoving party’s case necessarily renders all other facts
19 immaterial.” Id. In such a circumstance, summary judgment should be granted, “so long as
20 whatever is before the district court demonstrates that the standard for entry of summary
21 judgment, as set forth in Rule 56(c), is satisfied.” Id. at 323.

22 If the moving party meets its initial responsibility, the burden then shifts to the
23 opposing party to establish that a genuine issue as to any material fact actually does exist. See
24 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to
25 establish the existence of this factual dispute, the opposing party may not rely upon the
26 allegations or denials of its pleadings but is required to tender evidence of specific facts in the

1 form of affidavits, and/or admissible discovery material, in support of its contention that the
2 dispute exists. See Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 586 n.11. The opposing party
3 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome
4 of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
5 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir.
6 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could
7 return a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433,
8 1436 (9th Cir. 1987).

9 In the endeavor to establish the existence of a factual dispute, the opposing party
10 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
11 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
12 versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of summary
13 judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there is a
14 genuine need for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory
15 committee’s note on 1963 amendments).

16 In resolving the summary judgment motion, the court examines the pleadings,
17 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
18 any. Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson,
19 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed before the
20 court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587.

21 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to
22 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen
23 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.
24 1987). Finally, to demonstrate a genuine issue, the opposing party “must do more than simply
25 show that there is some metaphysical doubt as to the material facts Where the record taken

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1 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no
2 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted).

3 On April 29, 2003, the court advised plaintiff of the requirements for opposing a
4 motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. See Rand v. Rowland, 154
5 F.3d 952, 957 (9th Cir. 1998) (en banc), cert. denied, 527 U.S. 1035 (1999), and Klinge v.
6 Eikenberry, 849 F.2d 409 (9th Cir. 1988).

7 ANALYSIS

8 I. Statute of Limitations

9 As noted above, defendant Rhee first contends that this action is time-barred.
10 California law determines the applicable statute of limitations in this § 1983 action. See Wilson
11 v. Garcia, 471 U.S. 261 (1985). The applicable state limitations period is one year. See Cal.
12 Code Civ. Proc. § 340(3); see also Elliott v. City of Union City, 25 F.3d 800, 802 (9th Cir.1994).
13 Prison inmates serving a “term less than for life” are entitled to tolling of the limitation period for
14 two years during incarceration. See Cal. Civ. Code § 352.1. Federal law governs when
15 plaintiff’s § 1983 claims accrued and when the limitations period begins to run. Cabrera v. City
16 of Huntington Park, 159 F.3d 374, 379 (9th Cir. 1998). Under federal law, “the claim generally
17 accrues when the plaintiff ‘knows or has reason to know of the injury which is the basis of the
18 action.’” Id. (citations omitted).

19 By its terms, the tolling provision of § 352.1 does not apply to plaintiff, who is
20 serving a term of life in prison without possibility of parole following his 1988 conviction on
21 charges of first degree murder. (Ex. C to Defendant Seoung Rhee, M.D.’s Request for Judicial
22 Notice, filed October 21, 2004.)² Plaintiff claims that the legislative distinction between inmates
23 serving terms of less than life in prison and inmates serving life in prison without possibility of
24 parole violates his constitutional right to equal protection. This contention is without merit.

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26 ² Good cause appearing, defendant Rhee’s request for judicial notice. See Fed. R. Evid.
201.

1 Plaintiff is not a member of a protected class. As a result, the statute must be
2 analyzed under a rational basis standard. See, e.g., Vance v. Bradley, 440 U.S. 93, 96-97 (1979).
3 Under this standard, the statute must be upheld unless it bears no reasonable relationship to the
4 furtherance of a legitimate state interest and is irrational. Id. at 97; see also United States v.
5 Alexander, 673 F.2d 287, 288 (9th Cir.), cert. denied, 459 U.S. 876 (1982). The classification
6 need only be plausible, arguable or conceivable. Jackson Water Works, Inc. v. Public Utilities
7 Comm’n, 793 F.2d 1090, 1094 (9th Cir.1986), cert. denied, 479 U.S. 1102 (1987). If the
8 legislature could rationally have concluded that the statute might promote its goals, the
9 classification is reasonable and constitutional. See Minnesota v. Clover Leaf Creamery Co., 449
10 U.S. 456 (1981).

11 Statutes of limitation and tolling statutes “represent a public policy about the
12 privilege to litigate” and are subject to a relatively large degree of legislative control. Chase Sec.
13 Corp. v. Donaldson, 325 U.S. 304, 314 (1945). The California legislature could reasonably
14 decide that a tolling statute providing additional time for persons imprisoned for a period of
15 years, as opposed to those serving a life sentence, serves several state interests. If prisoners
16 serving a term of less than life in prison are granted additional time to initiate legal action they
17 may be able to pursue their claims without the stigma of being an inmate, and perhaps after being
18 able to marshal resources to bring their claims. In addition, allowing an inmate to wait until after
19 release to initiate litigation spares the prison system the logistical problems of prisoners
20 conducting litigation from within. It is rational to exclude persons serving sentences of life
21 without parole from the benefits of a tolling statute because these interests will not be served.
22 The tolling provision’s classification bears a rational relationship to legitimate state interests and
23 is neither arbitrary or irrational. Plaintiff’s contention that it violates his constitutional right to
24 equal protection is without merit.³

25 ³ Plaintiff also contends that § 352.1 violates the equal protection clause of the California
26 Constitution. “The equal protection analysis under the California Constitution is ‘substantially

1 The following facts relevant to his claim against defendant Rhee and said
2 defendant's statute of limitations defense are undisputed.

3 In 1988, plaintiff was sentenced to a term of life in prison without possibility of
4 parole, following his conviction on charges of first degree murder. Plaintiff first saw defendant
5 Rhee on March 17, 1999, complaining of "headaches and eye irritation." (Amended Complaint,
6 at 7.) Defendant Rhee referred plaintiff that day to the emergency room at High Desert
7 Correctional Treatment Center. (*Id.*) Plaintiff saw defendant Rhee again on April 1, 1999, and
8 May 17, 1999. (Declaration of Seoung Eun Rhee, M.D. in Support of Motion for Summary
9 Judgment, filed October 21, 2004, at ¶¶ 6-7.) On May 10, 2000, the hemangioma was surgically
10 removed. (Complaint, filed August 15, 2002, at 27.)

11 In 1999, plaintiff filed an inmate grievance claiming that he was receiving
12 inadequate medical care for his eye problem and the attendant symptoms. (Ex. 1 to Complaint.)
13 On May 1, 2000, plaintiff's inmate grievance was denied at the Director's Level. (*Id.*) Plaintiff's
14 original complaint in this action was filed on or about July 31, 2002.⁴

15 As noted above, plaintiff had one year after his claim accrued to file this action.
16 The evidence before this court shows that the last time defendant Rhee saw plaintiff for
17 complaints related to his eye was in May 1999. (Ex. A to Rhee Declaration.) Later that year,
18 plaintiff filed an inmate grievance complaining that he was being denied adequate care for his
19 eye problems and suffering numerous symptoms as a result. (*See* Ex. C to Rhee Request for
20 Judicial Notice.) Plaintiff knew of both defendant Rhee's alleged acts or omissions and of his
21 alleged injuries at the time he filed that grievance, which was finally resolved on May 1, 2000.

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23 similar' to analysis under the federal Equal Protection Clause" *See* L.A. County v. S. Cal. Tel.
24 Co., 32 Cal.2d 378, 196 P.2d 773, 781 (1948)." Rui One Corp. v. City of Berkeley, 371 F.3d
1137, 1154 (9th Cir. 2004).

25 ⁴ The original complaint was filed in this court on August 15, 2002. It is signed and
26 dated by plaintiff on July 31, 2002, which the court deems the filing date for purposes of the
statute of limitations analysis. *See* Houston v. Lack, 487 U.S. 266 (1988).

1 This action was not filed until July 31, 2002, over two years later. To the extent plaintiff claims
2 that defendant Rhee's acts or omissions caused or contributed to plaintiff's pre-operative
3 suffering, it is time-barred.

4 Plaintiff also claims that he did not learn until September 19, 2001 that he had
5 suffered permanent nerve damage as a result of the delay in treatment. To the extent plaintiff
6 seeks a remedy for that alleged injury, his claim is timely.

7 II. Adequacy of Defendant Rhee's Treatment

8 Defendant Rhee also seeks summary judgment on the ground that he provided
9 plaintiff with constitutionally adequate medical care. Plaintiff's Eighth Amendment claim has
10 two elements, a serious medical need and "acts or omissions [by defendant] sufficiently harmful
11 to evidence deliberate indifference" to that need. Estelle v. Gamble, 429 U.S. 97, 106 (1976);
12 see also McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1991).

13 A medical need is "serious" "if the failure to treat the prisoner's condition could
14 result in further significant injury or the 'unnecessary and wanton infliction of pain.'"
15 McGuckin, at 1059 (quoting Estelle v. Gamble, 429 U.S. at 104, 97 S.Ct. at 291). A defendant's
16 response to the medical need violates the Eighth Amendment if it constitutes deliberate
17 indifference thereto. Deliberate indifference may be shown "when prison officials deny, delay or
18 intentionally interfere with medical treatment, or it may be shown by the way in which prison
19 physicians provide medical care." Hutchinson v. U.S., 838 F.2d 390, 394 (9th Cir. 1988). "To
20 demonstrate that a prison official was deliberately indifferent to an inmate's serious . . . health
21 needs, the prisoner must show that 'the official [knew] of and disregard[ed] an excessive risk to
22 inmate health.' Farmer v. Brennan, 511 U.S. 825, 838, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)."
23 Austin v. Terhune, 367 F.3d 1167, 1172 (9th Cir. 2004).

24 In support of his motion for summary judgment, defendant Rhee has presented
25 undisputed that he saw plaintiff several times between March and May 1999 for complaints of
26 eye pain. (Rhee Declaration, passim.) On the first visit, defendant Rhee referred plaintiff to the

1 emergency room, where he was seen by another physician and then transported to see an
2 ophthalmologist. (Id. at ¶ 5.) On April 1, 1999, defendant Rhee saw plaintiff again, noted that
3 neither an MRI nor thyroid function tests had been performed, reordered those tests, and
4 examined plaintiff. (Id. at ¶ 6.) He also wrote in the notes that plaintiff should have a follow-up
5 appointment after the MRI was done. (Id.) When plaintiff saw defendant Rhee again on May 17,
6 1999, defendant Rhee noted that the MRI still had not been done, and he again reordered the
7 MRI. He emphasized the importance of getting the tests done. (Id. at ¶ 7.) He also prescribed
8 Tylenol for plaintiff's complaints of pain. The MRI was done on May 21, 1999. (Id.) There is
9 no evidence that defendant Rhee saw plaintiff after the May 17, 1999 visit.

10 Plaintiff contends that defendant Rhee failed to follow up on plaintiff's condition
11 after the MRI was completed, but it is clear from the allegations of the amended complaint that
12 plaintiff was seen by several other physicians after the study was completed. (Amended
13 Complaint, at 22.)

14 After careful review of the record herein, this court finds no evidence that
15 defendant Rhee was deliberately indifferent to plaintiff's need for evaluation and treatment of his
16 eye condition. Accordingly, defendant Rhee is entitled to summary judgment on plaintiff's Eighth
17 Amendment claim that acts or omissions by defendant Rhee contributed to plaintiff's alleged
18 permanent nerve damage.

19 In accordance with the above, IT IS HEREBY ORDERED that defendant Rhee's
20 October 21, 2004 request for judicial notice is granted; and

21 IT IS HEREBY RECOMMENDED that defendant Rhee's October 21, 2004
22 motion for summary judgment be granted.

23 These findings and recommendations are submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
25 days after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
2 shall be served and filed within ten days after service of the objections. The parties are advised
3 that failure to file objections within the specified time may waive the right to appeal the District
4 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: July 27, 2005.

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8 UNITED STATES MAGISTRATE JUDGE

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